STATE OF NEW YORK

5241

2025-2026 Regular Sessions

IN SENATE

February 20, 2025

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to utilization review determinations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs 4 and 5 of subsection (b) of section 3224-b of the insurance law are renumbered paragraphs 6 and 7 and two new paragraphs 4 and 5 are added to read as follows:

(4) In the absence of fraud, a retrospective review or audit of a claim by or on behalf of a health plan shall not reverse or otherwise alter a determination of medical necessity previously made by a utilization review agent or external appeal agent pursuant to article forty-nine of this chapter or article forty-nine of the public health law.

(5) In the absence of fraud, a review or audit of a claim by or on behalf of a health plan shall not downgrade or bundle the coding of a claim if it has the effect of reversing or altering a determination of medical necessity, which includes a level of care determination made by or on behalf of the health plan.

§ 2. Section 4900 of the insurance law is amended by adding a new subsection (d-6) to read as follows:

(d-6) "Mental health and substance use disorders" means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the World Health Organization's International Statistical Classification of Diseases and Related Health Problems, or that is listed in the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association's Diagnostic and Statistical Manual of

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09369-01-5

Mental Disorders or the World Health Organization's International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

§ 3. Paragraph 7 of subsection (g-5) of section 4900 of the insurance law, as amended by chapter 357 of the laws of 2010, is amended and a new paragraph 8 is added to read as follows:

(7) findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services[~~.~~]**; and**

(8) peer-reviewed practice guidelines, criteria, or recommendations from non-profit clinical specialty associations that are generally recognized by clinicians practicing in the relevant clinical specialty.

§ 4. Subsections (g-6) and (g-6-a) of section 4900 of the insurance law are relettered subsections (g-6-a) and (g-6-b) and a new subsection (g-6) is added to read as follows:

(g-6) "Medically necessary" or "medical necessity" means a covered health care service or product that addresses the specific needs of the insured for the purposes of preventing, screening, diagnosing, managing, treating, or minimizing the progression of an illness, injury, condition or its symptoms, and that is:

(1) in accordance with medical and scientific evidence;

(2) clinically appropriate in terms of type, frequency, extent, site, and duration; and

(3) not primarily for the economic benefit of the insurer or the insured or for the convenience of the insured or the health care provider.

§ 5. Subsection (g-6-b) of section 4900 of the insurance law, as added by section 11 of part H of chapter 60 of the laws of 2014, and as relettered by section 4 of this act, is amended to read as follows:

(g-6-b) "Out-of-network referral denial" means a denial under a managed care product as defined in subsection (c) of section four thousand eight hundred one of this chapter of a request for an authorization or referral to an out-of-network provider on the basis that the health care plan has a health care provider in the in-network benefits portion of its network with appropriate training and experience to meet the particular health care needs of an insured, and who is able to provide the requested health service. The notice of an out-of-network referral denial provided to an insured shall include information explaining what information the insured must submit in order to appeal the out-of-network referral denial pursuant to subsection (a-2) of section four thousand nine hundred four of this article. An out-of-network referral denial under this subsection does not constitute an adverse determination as defined in this article. An out-of-network referral denial shall not be construed to include an out-of-network denial as defined in subsection [~~(g-6)~~] **(g-6-a)** of this section.

§ 6. Paragraphs 8, 9, 10, 11 and 12 of subsection (a) of section 4902 of the insurance law, paragraph 8 as added by chapter 705 of the laws of 1996, paragraph 9 as amended by section 37 and paragraph 12 as added by section 38 of subpart A of part BB of chapter 57 of the laws of 2019,

and paragraphs 10 and 11 as added by chapter 512 of the laws of 2016, are amended to read as follows:

(8) Establishment of a requirement that emergency services**, including emergency services for mental health and substance use disorders provided by mobile crisis response teams or crisis receiving or stabilization centers,** rendered to an insured shall not be subject to prior authorization nor shall reimbursement for such services be denied on retrospective review[**; provided, however, that such services are medically necessary**]**. Notwithstanding the foregoing, payment for emergency services may be denied only if a health plan reasonable determines the emergency services were never performed** to stabilize or treat an emergency condition.

(9) When conducting utilization review for purposes of determining health care coverage for substance use disorder treatment, a utilization review agent shall utilize [**an evidence-based and**] **a** peer reviewed clinical review tool that is appropriate to the age of the patient**, fully consistent with medical and scientific evidence, and publicly identifies all authors, reviewers, and editors who participated in the development and review of such tool**. When conducting such utilization review for treatment provided in this state, a utilization review agent shall utilize an evidence-based and peer reviewed clinical tool designated by the office of [**alcoholism and substance abuse**] **addiction** services **and supports** that is consistent with the treatment service levels within the office of [**alcoholism and substance abuse**] **addiction** services **and supports** system. All approved tools shall have inter rater reliability testing completed by December thirty-first, two thousand sixteen.

[**10.**] **(10)** When establishing a step therapy protocol, a utilization review agent shall utilize recognized [**evidence-based and**] peer reviewed clinical review criteria that [**also**] **is fully consistent with medical and scientific evidence and** takes into account the needs of atypical patient populations and diagnoses when establishing the clinical review criteria. **The criteria shall publicly identify all authors, reviewers, and editors who participated in the development and review of the criteria.**

[**11.**] **(11)** When conducting utilization review for a step therapy protocol override determination, a utilization review agent shall utilize, in addition to any other requirements of this article, [**recognized evidence-based and**] peer reviewed clinical review criteria that is appropriate for the insured and the insured's medical condition **and is fully consistent with medical and scientific evidence. The criteria shall publicly identify all authors, reviewers, and editors who participated in the development and review of the criteria**.

(12) When conducting utilization review for purposes of determining health care coverage for a mental health condition, a utilization review agent shall utilize [**evidence-based and**] peer reviewed clinical review criteria that is **fully consistent with medical and scientific evidence and** appropriate to the age of the patient. The utilization review agent shall use **clinical review criteria designated by the commissioner of the office of mental health for level of care determinations, in consultation with the superintendent and the commissioner of health. For coverage determinations outside the scope of the criteria designated for level of care determinations, the utilization review agent shall use** clinical review criteria deemed appropriate and approved for such use by the commissioner of the office of mental health, in consultation with the commissioner of health and the superintendent. Approved clinical

review criteria shall have inter rater reliability testing completed [~~by December thirty-first, two thousand nineteen~~] **prior to implementation**.

§ 7. Section 4903 of the insurance law is amended by adding a new subsection (j) to read as follows:

(j) A utilization review agent shall authorize a request for a covered health care service or product that is medically necessary.

§ 8. Paragraphs (h), (i) and (j) of subdivision 1 and subdivisions 3 and 4 of section 4902 of the public health law, paragraph (h) of subdivision 1 as added by chapter 705 of the laws of 1996, paragraph (i) of subdivision 1 as amended and paragraph (j) of subdivision 1 as added by section 43 of subpart A of part BB of chapter 57 of the laws of 2019, and subdivisions 3 and 4 as added by chapter 512 of the laws of 2016, are amended to read as follows:

(h) Establishment of a requirement that emergency services**, including emergency services for mental health and substance use disorders provided by mobile crisis response teams or crisis receiving or stabilization centers,** rendered to an enrollee shall not be subject to prior authorization nor shall reimbursement for such services be denied on retrospective review[~~; provided, however, that such services are medically necessary~~]**. Notwithstanding the foregoing, payment for emergency services may be denied only if a health plan reasonably determines the emergency services were never performed** to stabilize or treat an emergency condition.

(i) When conducting utilization review for purposes of determining health care coverage for substance use disorder treatment, a utilization review agent shall utilize [~~an evidence-based and~~] **a** peer reviewed clinical review tool that is appropriate to the age of the patient**, fully consistent with medical and scientific evidence, and publicly identifies all authors, peer reviewers, and editors who participated in the development and review of such tool**. When conducting such utilization review for treatment provided in this state, a utilization review agent shall utilize an evidence-based and peer reviewed clinical tool designated by the office of [~~alcoholism and substance abuse~~] **addiction** services **and supports** that is consistent with the treatment service levels within the office of [~~alcoholism and substance abuse~~] **addiction** services **and supports** system. All approved tools shall have inter rater reliability testing completed by December thirty-first, two thousand sixteen.

(j) When conducting utilization review for purposes of determining health care coverage for a mental health condition, a utilization review agent shall utilize [~~evidence-based and~~] peer reviewed clinical review criteria that is **fully consistent with medical and scientific evidence and** appropriate to the age of the patient. The utilization review agent shall use clinical review criteria [~~deemed appropriate and approved for such use~~] **designated** by the commissioner of the office of mental health **for level of care determinations**, in consultation with the commissioner and the superintendent of financial services. **For coverage determinations outside the scope of the criteria designated for level of care determinations, the utilization review agent shall use clinical review criteria deemed appropriate and approved for such use by the commissioner of the office of mental health, in consultation with the commissioner and the superintendent of financial services.** Approved clinical review criteria shall have inter rater reliability testing completed [~~by December thirty-first, two thousand nineteen~~] **prior to implementation**.

3. When establishing a step therapy protocol, a utilization review agent shall utilize [~~recognized evidence-based and~~] peer reviewed clinical review criteria that **is fully consistent with medical and scientif-**

ic evidence and takes into account the needs of atypical patient populations and diagnoses [~~as well~~] when establishing the clinical review criteria. The criteria shall publicly identify all authors, reviewers, and editors who participated in the development and review of the criteria.

4. When conducting utilization review for a step therapy protocol override determination, a utilization review agent shall utilize, in addition to any other requirements of this article, [~~recognized evidence-based and~~] peer reviewed clinical review criteria that is appropriate for the enrollee and the enrollee's medical condition and is fully consistent with medical and scientific evidence. The criteria shall publicly identify all authors, reviewers, and editors who participated in the development and review of the criteria.

§ 9. This act shall take effect immediately.